

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL F. MOREAU,

Plaintiff-Appellant,

and

TIME INSURANCE COMPANY,

Intervening Plaintiff,

v

DANIEL POWLESLAND and CAROL POWLESLAND,

Defendants-Appellees,

and

RICK J. HOLLINGER,

Defendant.

UNPUBLISHED

March 28, 2000

No. 210484

Monroe Circuit Court

LC No. 96-004717-NO

MICHAEL F. MOREAU,

Plaintiff,

and

TIME INSURANCE COMPANY,

Intervening Plaintiff-Appellant,

v

DANIEL POWLESLAND and CAROL POWLESLAND,

Defendant-Appellees,

and

RICK J. HOLLINGER,

Defendant.

No. 210568

Monroe Circuit Court

LC No. 96-004717-NO

Before: Bandstra, C.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

In this premises liability and negligence action, the trial court granted summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants Daniel Powlesland and Carol Powlesland (defendants). In an order of partial dismissal, the trial court subsequently dismissed defendant Rick J. Hollinger. In these consolidated appeals, plaintiff Michael F. Moreau and intervening plaintiff Time Insurance Company contend that the trial court erred by granting summary disposition in favor of defendants. We affirm.

While a guest at defendants' home, plaintiff was injured when another guest detonated a pipe bomb and caused shrapnel to fly into plaintiff's arm. The trial court granted defendants' motion for summary disposition on the grounds that plaintiff was aware of the danger and defendants were under no obligation to warn Moreau of the readily apparent danger.

Plaintiffs argue that the trial court erred in granting summary disposition. A motion for summary disposition relying upon MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 210 (1998). A court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Id.* The party opposing the motion has the burden of showing that a genuine issue of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994). All inferences will be drawn in favor of the nonmovant. *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987). A court must determine whether a record could be developed that would leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

Here, there is no dispute that Moreau was a licensee. The duty to adult licensees is only to warn them of any hidden dangers about which the owner knows or has reason to know, if the licensee does not know or have reason to know of the dangers involved. *D'Ambrosia v McCready*, 225 Mich App 90, 94; 570 NW2d 797 (1997). That the defective condition is obvious is usually sufficient to apprise an adult licensee of the full extent of the risk involved. *DeBoard v Fairwood Villas Condominium Ass'n*, 193 Mich App 240, 242-243; 483 NW2d 422 (1992). Here, plaintiff admitted that he was aware of the danger of detonating a pipe bomb.¹ Hence, defendants did not have a duty to warn plaintiff of the danger. Contrary to plaintiff's assertion, there is no requirement that a licensee have actual knowledge that a specific injury is likely to occur in order to be charged with knowledge of the danger. *DeBoard*, *supra* at 242-243.

Plaintiffs also argue that defendants were negligent in failing to protect plaintiff from the dangerous activity because there was a "special relationship" between defendants, as hosts, and plaintiff, as guest. We disagree. Generally, there is no duty to aid or protect another. *Williams v Cunningham Drug Stores*, 429 Mich 495; 418 NW2d 381 (1988); *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 8; 492 NW2d 472 (1992). An exception to this rule applies when there is a special relationship between the parties.² *Id.* In a special relationship, one person entrusts himself to the control and protection of another, with a consequent loss of control to protect himself. *Id.* at 9. In such cases, the duty to protect is imposed upon the person in control because he is in the best position to provide a place of safety. *Id.*

Here, plaintiffs have failed to establish that there was a special relationship between the plaintiff and defendants. There is no indication in the record that plaintiff entrusted himself to the control and protection of defendants. Further, there is no indication that, pursuant to his relationship with defendants, plaintiff lost the ability to protect himself. Plaintiff was free to leave defendants' home at any time, and his movements were not restricted by defendants. As noted above, plaintiff was aware that another guest was detonating pipe bombs. Clearly, plaintiff did not entrust himself to the care and protection of defendants, with a subsequent loss of control to protect himself. Because no special relationship existed between plaintiff and defendants, defendants were under no duty to protect or warn plaintiff of the danger.

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

¹ Plaintiffs contend that a finding that plaintiff was aware of the danger constitutes an improper finding of contributory negligence. Plaintiffs rely on *Forche v Gieseler*, 174 Mich App 588; 436 NW2d 437 (1989), for the proposition that a court's finding as to a plaintiff's knowledge of a dangerous condition is an erroneous application of contributory negligence. *Id.* at 595. However, while *Forche* itself was not expressly overruled in *Riddle v McLouth Steel Products*, 440 Mich 85; 485 NW2d 676 (1992), the rationale was definitely set aside. In *Riddle*, the Court explained that the adoption of comparative negligence in Michigan does not abrogate the necessity of an initial finding that the premises owner owed a duty to invitees. *Id.* Thus, a court must determine the obviousness of a dangerous condition in order to ascertain the duty owed to a plaintiff by a landowner. *Id.* at 95-96. Therefore, the court in this case appropriately considered plaintiff's knowledge of the danger as a basic question of law in order to determine defendants' duty.

² Some generally recognized "special relationships" include common carrier-passenger, innkeeper-guest, employer-employee, landlord-tenant, and invitor-invitee. *Dykema, supra* at 8.